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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

BEFORE THE

# Federal Communications Commission

In the Matter of:

Amendment of Parts 21 and 74 of the  
Commission's Rules With Regard to  
Filing Procedures in the Multipoint  
Distribution Service and in the  
Instructional Television Fixed Service

and

Implementation of Section 309(j) of the  
Communications Act - Competitive  
Bidding

MM Docket No. 94-131

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PP Docket No. 93-253

To: The Commission

## PETITION FOR RECONSIDERATION

The National ITFS Association ("NIA"), through its counsel, pursuant to Section 1.429 of the Rules of the Commission, hereby petitions for reconsideration of portions of the Commission's Report and Order in the above-captioned matter. In support thereof, NIA offers the following:

I. NIA is the only national association representing the interests of educational institutions, state school systems and nonprofit entities that own and

operate ITFS facilities throughout the United States. Some of the members operate with excess capacity leases while others operate full-time educational learning services. NIA has participated in all of the proceedings at the FCC since 1983 which have involved ITFS facilities, licensing procedures and other regulatory matters. Having participated less than two years ago in the development of an industry-wide position paper in cooperation with the Wireless Cable Association International ("WCAI") concerning channel loading and system scheduling, NIA finds that its ties to the wireless cable industry have been growing stronger over time as the issues that once separated the two groups fade in the face of issues that they face together. Nothing in this Petition should be read in any way to diminish this relationship.

2. NIA has had the opportunity to review the Petition for Reconsideration and Clarification filed by the "ITFS Parties" in this proceeding and adopts and underscores its support for the arguments and positions put forth therein. Specifically, NIA believes that the FCC went completely beyond the terms of the Notice in this proceeding in its decision granting BTA permittees/licensees the right of first refusal with respect to excess capacity leases within any specific BTA. NIA strongly supports the development of the wireless industry, and to the extent necessary, further supports procedures that encourage the aggregation of channels in a market as that is deemed to be vital to the development of the industry by the wireless interests, but NIA cannot

accept a scheme that brings the educational interests to the bargaining table hog-tied, gagged, and blind-folded (with one hand left free to receive the pen with which to sign the lease put in front of it by its “partner”). Can the Commission seriously believe that any party other than the BTA licensee will bargain with an educational entity within the BTA, knowing that its efforts can be wiped out with the stroke of a pen? Can this lead anywhere but BTA licensees carrying around their own collection of non-local “educational” entities to serve as their partners in the wireless adventure?

3. In its tunnel-vision scheme designed more to increase the value of the units that are being auctioned off than to serve the need of any of the parties doing the bidding, the Commission has completely sacrificed the educational interests for whom this whole section of the spectrum was once reserved. This is the same Commission that is doing this at least in part to create a competitive marketplace in the video distribution marketplace. Apparently the competitive model doesn’t work at every level. On a scale from least intrusive to most intrusive, the government, with its own economic agenda, has weighed in at the latter end.

4. Now add to the mixture the totally ambiguous provision of the Order stating that “...nothing in this Report and Order precludes either new licensees or incumbents from using MDS frequencies for other kinds of services...”. Since this

neither adds to nor detracts from the existing Rules it can only have been included to fan the flames of value in the auction process. How many entities other than wireless cable providers will be drawn into the bidding? How many speculators with deep pockets will envision new PCS or other possibilities and how much will they bid? Having already assigned educators to table scraps, will the wireless industry find its way into critical markets blocked by a speculator who has a five year window to decide what to do with the spectrum in its BTA(s)?

5. With respect to the protected service area granted to BTA licensees, the ITFS Parties correctly point out that the effect of the Rule, intended or not, is to give the BTA licensee absolute power over educators using ITFS for their own purposes in the D and G groups in every market, and potentially all ITFS channels in other markets. All this power without regard to actual interference to existing or proposed facilities. That this is unacceptable to the educational community should come as no surprise to the Commission.

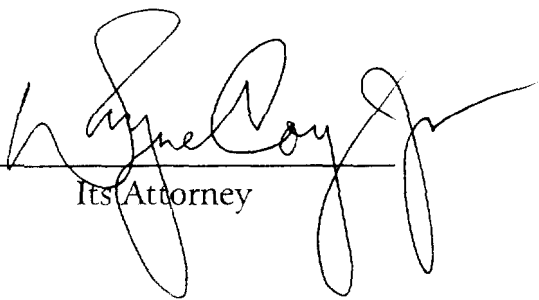
6. In what is hoped to have been merely an inadvertent oversight, ITFS operators are not included among the "incumbent" operators whose protection from interference is grandfather under new section 21.938(b). One further hopes that correction of the oversight need not be further argued.

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For all of the above reasons. The National ITFS Association urges the Commission to reconsider the actions it has taken in this docket as specifically set forth above.

Respectfully submitted

NATIONAL ITFS ASSOCIATION

By   
Its Attorney

August 16, 1995